INTERNATIONAL COPYRIGHT

CONSIDERED IN SOME OF ITS RELATIONS TO ETHICS AND POLITICAL ECONOMY

BY

GEORGE HAVEN PUTNAM

AN ADDRESS DELIVERED JANUARY 29TH, 1878, BEFORE THE NEW YORK FREE-TRADE CLUB

NEW YORK
G. P. PUTNAM'S SONS
182 FIFTH AVENUE
1879.

INTERNATIONAL COPYRIGHT.*

THE questions relating to copyright belong naturally to the sphere of political economy. They have to do with the laws governing production, and with the principles regulating supply and demand; and they are directly dependent upon a due determining of the proper functions of legislation, and of the relations which legislation, having for its end the welfare of the community as a whole, ought to bear towards production and trade.

As students of economic science, we recognize the fact that, in all its phases, it is in reality based upon two or three very simple propositions, such as:

Two plus two make four.

Two from one you can't.

That which a man has created by his own labor is his own, to do what he will with, subject only to his proportionate contribution to the cost of carrying on the organization of the community under the protection of which his labor has been accomplished, and to the single lim-

* A paper read January 29th, 1878, before the New York Free-Trade Club.

itation that the results of his labor shall not be used to the detriment of his fellow-men.

It is not in the power of legislators to make or to modify the laws of trade; it is their business to act in accordance with these laws.

Economic science is, then, but the systematizing, on the basis of a few generally accepted principles, of the relations of men as regards their labor and the results of their labor, namely, their property. There is therefore an essential connection between the systems governing all these relations, however varied they may be. Soundness of thought in regard to one group of them leads to soundness of thought about the others.

Interested as we are in the work of bringing the community to a sound and logical standard of economic faith and practice, it is important for us to recognize and to emphasize the essential relations connecting as well the different *scientific* positions as the various sets of *fallacious* assumptions. Further, we can hardly lay too much stress upon the oft-repeated dictum that a system may be correct in theory yet pernicious in practice, maintaining, as we do, that where the application of a theory brings failure the result is due either to the unsoundness of the theory or to some blundering in its application.

We claim, also, that with reference to the rights of labor, property, and capital, the free-trader is the true protectionist. It is the free-trader who demands for the

laborer the fullest, freest use of the results of his labor, and for the capitalist the widest scope in the employment of his capital; and it is he who asserts that the paternal authority which restricts the workingman in the free exchange of the products of his craft, which limits the directions and the methods for the use of capital, appropriates—or, to speak more strictly, destroys—a portion of the value of the labor and the capital, and prevents the ownership from being real or complete.

Authors are laborers, and their works are, as fully as is the case with any other class of laborers, the results of their own productive faculties and energies.

Literary laborers lay claim, therefore, to the same protection for a full and free enjoyment of the results of their labors as is demanded by those who work with their hands and who are in the strict sense of the term manufacturers. Such enjoyment would include the right to sell their productions in the open market where they pleased and how they pleased, and if this right to a free exchange is restricted within political boundaries, is hampered by artificial obstacles, the author is not the full owner of his material; a portion of its value has been taken away from him. In so far as international copyrights have not been established, this is the position of the author of to-day.

Copyright is defined by Drone in his "Law of Copyright," as "the exclusive right of the owner to multiply and to dispose of copies of an intellectual production."

It is also used as a synonym for literary property. Regarding literary property, Drone says:

"There can be no property in a production of the mind unless it is expressed in a definite form of words. But the property is not in the words alone; it is in the intellectual creation, which language is merely a means of expressing and communicating."

Copyright may therefore be said to be the legal recognition of brain-work as property.

It is akin in its nature to patent-right, which is also but the legal recognition of the existence of property in an idea, or a group of ideas, or the form of expression of an idea.

International *patent*-rights have been recognized and carried into effect much more generally than have copyrights. The patentee of an improved toothpick would be able to secure to-day a wider recognition of his right as a creator than is accorded to the author of "Uncle Tom's Cabin" or of "Adam Bede."

"The existence of literary property," says Drone, "is traced back by record to 1558, when an entry of copies appears in the register of the Company of Stationers of London." Between 1558 and 1710 there was no legislation creating this property or confining ownership, nor any abridging its perpetuity or restricting its enjoyment. It was understood, therefore, to owe its existence to common law, and this conclusion, arrived at by the weightiest authorities, remained practically unquestioned

until 1774. During this earlier period there were some instances of the recognition of literary property, but the earliest reported case concerning such property occurred in 1666, in which the House of Lords unanimously agreed that "a copyright was a thing acknowledged at common law." A licensing act, passed in Parliament in 1674, and expiring in 1679, prohibited, under pain of forfeiture, the printing of any work without the consent of the owner. But the first act attempting to fully define and protect copyright in Great Britain was that of 1710, known as the 8th of Anne. It was entitled "An Act for the Encouragement of Learning," and, declaring that an author should have the sole right of publishing his book, prescribed penalties against any who should infringe that right. Its evident intention was to more clearly establish, and make more easily defensible, the rights of authors, but curiously enough it had for its effect a very material limitation of those rights.

It provided, namely, that copyright should be secured to the author or his assigns for fourteen years, with a privilege of renewal to the author or his representatives for fourteen years longer. This privilege of renewal was not conveyed to any one who might have purchased the author's copyright. It was supposed for a long time that this statute had not interfered with any rights that authors might possess at common law, and in the oft-cited case of Millar *vs.* Taylor in 1769, in regard to a reprint of Thomson's "Seasons," a majority of the

judges of the King's Bench (including among them Lord Mansfield) gave it as their opinion that the act was *not* intended to destroy, and had not destroyed, copyright at common law, but had simply protected it more efficiently during the periods specified. The opinion delivered by Lord Mansfield, as chief justice of the court, remains one of the strongest and most conclusive statements of the property-rights of authors, and has been termed one of the grandest judgments in English judicial literature. Its conclusion is as follows:

"Upon the whole, I conclude that upon every principle of reason, natural justice, morality, and common law; upon the evidence of the long received opinion of this property appearing in ancient proceedings and in law cases; upon the clear sense of the legislature, and the opinions of the greatest lawyers of their time since that statute—the right (that is in perpetuity) of an author to the copy of his work appears to be well founded, . . . and I hope the learned and industrious will be permitted from henceforth not only to reap the same, but the full profits of their ingenious labors, without interruptions, to the honor and advantage of themselves and their families."

In 1774, in the case of Donaldson *vs.* Beckett, the House of Lords decided on an appeal, first, that authors had possessed at common law the right of copyright in perpetuity, but, secondly, that this right at common law had been taken away by the statute of Anne, and a term of years substituted for perpetuity.

Chief among those who, in opposition to this decis-

ion, advised the lords that literary property was not less inviolable than any species of property known to the law of England, was Sir William Blackstone. The most important influence in support of the decision was exercised by the arguments of Justice Yates and Lord Camden. "This judgment," says Drone, "has continued to represent the law; but its soundness has been questioned by very high authorities." In 1851 Lord Campbell expressed his agreement with the views of Lord Mansfield. In 1854, Justice Coleridge said: "If there was one subject more than another upon which the great and varied learning of Lord Mansfield, his special familiarity with it, and the philosophical turn of his intellect, could give his judgment peculiar weight, it was this. I require no higher authority for a position which seems to me in itself reasonable and just."

In 1841 an important debate took place in Parliament upon this same issue. The right at common law of ownership in perpetuity was asserted by Sergeant Talfourd and Lord Mahon, and the opinion that copyright was the creation of statute law and should be limited to a term of years was defended by Macaulay.

The conclusions of the latter were accepted by the House, and the act of 1842, which is still in force, was the result. By this act the term of copyright was fixed at forty-two years, or if at the end of that time the author be still living, for the duration of his life.

I have referred to these discussions as to the nature

of the authority through which the author's ownership exists or is created, as the question will be found to have an important bearing upon international copyright. In connection with this debate of 1842 was framed the famous petition of Thomas Hood, which, if it were not presented to Parliament, certainly deserved to be. It makes a fair presentment of the author's case, and is worth quoting:

"That your petitioner is the proprietor of certain copyrights which the law treats as copyhold, but which in justice and equity, should be his freeholds. He cannot conceive how 'Hood's Own,' without a change in the title-deeds as well as the title, can become 'Everybody's Own' hereafter.

"That your petitioner may burn or publish his manuscripts at his own option, and enjoys a right in and control over his own productions which no press, now or hereafter, can justly press out of him.

"That as a landed proprietor does not lose his right to his estate in perpetuity by throwing open his grounds for the convenience and gratification of the public, neither ought the property of an author in his works to be taken from him, unless all parks become commons.

"That your petitioner, having sundry snug little estates in view, would not object, after a term, to contribute his private share to a general scramble, provided the landed and moneyed interests, as well as the literary interest, were thrown into the heap; but that in the mean time, the fruits of his brain ought no more to be cast amongst the public than a Christian woman's apples or a Jewess' oranges.

"That cheap bread is as desirable and necessary as cheap books; but it hath not yet been thought just or expedient to

ordain that, after a certain number of crops, all corn-fields shall become public property.

"That, whereas in other cases long possession is held to affirm a right to property, it is inconsistent and unjust that a mere lapse of twenty-eight or any other term of years should deprive an author at once of principal and interest in his own literary fund. To be robbed by Time is a sorry encouragement to write for Futurity!

"That a work which endures for many years must be of a sterling character, and ought to become national property; but at the expense of the public, or at any expense save that of the author or his descendants. It must be an ungrateful generation that, in its love of 'cheap copies,' can lose all regard for 'the dear originals.'

"That, whereas, your petitioner has sold sundry of his copyrights to certain publishers for a sum of money, he does not see how the public, which is only a larger firm, can justly acquire even a share in copyright, except by similar means—namely, by purchase or assignment. That the public having constituted itself by law the executor and legatee of the author, ought in justice, and according to practice in other cases, to take to his debts as well as his literary assets.

"That when your petitioner shall be dead and buried, he might with as much propriety and decency have his body snatched as his literary remains.

"That, by the present law, the wisest, virtuousest, discreetest, best of authors, is tardily rewarded, precisely as a vicious, seditious, or blasphemous writer is summarily punished—namely, by the forfeiture of his copyright.

"That, in case of infringement on his copyright, your petitioner cannot conscientiously or comfortably apply for redress to the law whilst it sanctions universal piracy hereafter.

"That your petitioner hath two children, who look up to

him, not only as the author of the 'Comic Annual,' but as the author of their being. That the effect of the law as regards an author is virtually to disinherit his next of kin, and cut him off with a book instead of a shilling.

"That your petitioner is very willing to write for posterity on the lowest terms, and would not object to the long credit; but that, when his heir shall apply for payment to posterity, he will be referred back to antiquity.

"That, as a man's hairs belong to his head, so his head should belong to his heirs; whereas, on the contrary, your petitioner hath ascertained, by a nice calculation, that one of his principal copyrights will expire on the same day that his only son should come of age. The very law of nature protests against an unnatural law which compels an author to write for anybody's posterity except his own.

"Finally, whereas it has been urged, 'if an author writes for posterity, let him look to posterity for his reward,' your petitioner adopts that very argument, and on its very principle prays for the adoption of the bill introduced by Mr. Sergeant Talfourd, seeing that by the present arrangement posterity is bound to pay everybody or anybody but the true creditor."

In France perpetual copyright was guaranteed from very early times. The Ordinances of Moulines of 1556, the Declaration of Charles IX. in 1571, and the letters-patent of Henry III. constituted the ancient legislation on the subject, but the sovereign had a right to refuse the guarantee whenever he thought desirable. In 1761 the Council of State continued to a grandson of La Fontaine the privilege that his grandfather possessed, on condition, however, that he should not assign it to a bookseller. The Revolution of 1789 modified this re-

gime, and now copyright is guaranteed to authors and their widows during their lives, to their children, for twenty years; and if they leave no children, to their heirs for ten years only. According to French law, a French subject does not injure his copyright by publishing his work first in a foreign country. No matter where the publication takes place, copyright forthwith accrues in France on his behalf, and on the necessary deposit being effected, its infringement may be proceeded against in a French court. Moreover, a foreigner publishing in France will enjoy the same copyright as a native, and this whether he has previously published in his own or in any other country or not. In Germany and in Austria copyright continues for the author's life and for thirty years after his death. The longest term of copyright is conceded in Italy, where it endures for the life of the author and forty years, with a second term of forty years, during which last any one can publish the work upon paying the royalty to the author or his assigns. The shortest term of copyright exists in Greece, where it endures for but fifteen years from publication.

In the United States, by the law of 1831, the term is for twenty-eight years, with the right of renewal to the author, his wife or his children, for fourteen years further. The renewal must be recorded within six months before the expiration of the first term of twenty-eight years.

Drone says:

"In the United States the authorities have been divided

not less than in England regarding the origin and nature of literary property. Indeed, the doctrines there prevalent have ruled our courts. In 1834, in the case of Wheaton *vs.* Peters, the same question came before the Supreme Court, that had been decided by the Court of King's Bench in 1769, and by the House of Lords in 1774—namely, whether copyright in a published work existed by common law; and if so, whether it had been taken away by statute.

"The court held that the law had been settled in England to the effect that the author had no right in a published work excepting that secured by statute; that there was no common law of the United States, and that the common law as to copyright had not been adopted in Pennsylvania, in which State the cause of this action arose; and that by the copyright statute of 1790, Congress did not affirm an existing right, but created one. The opinion, which was delivered by Justice McLean, was concurred in by three of the judges, and dissented from by two, Justices Thompson and Baldwin, who defended the positions and recalled the arguments of Lord Mansfield and Sir William Blackstone. Justice Baldwin said: 'Protection is the avowed and real purpose of the act of 1790. There is nothing here admitting the construction that a new right is created. . . . It is a forced and unreasonable interpretation to consider it as restricting or abolishing any pre existing right!'"

Previous to the act of Congress of 1790, acts securing copyright to authors for limited terms had been passed in Connecticut and Massachusetts in 1783, in Virginia in 1785, in New York in 1786, and in other States at later dates. The statute of 1790 gave copyright for fourteen years, with a renewal to the author, if living, of fourteen years further. In 1831 was passed the act of already

quoted, and in 1870 the regulation went into effect that a printed title of the work copyrighted must be filed with the Librarian of Congress before publication, and two copies of the complete book be delivered within ten days after publication.

In 1874 it was provided that the form of the copyright notice in books should read, "Copyright, 18—, by A. B."

The first step towards a recognition of the rights of foreign authors was taken in 1836 by Prussia, when she prohibited the sale within her boundaries of any pirated or counterfeited editions of German works.

In 1837 a Copyright Convention was concluded between the different members of the German Confederation. In 1838 the British Parliament passed a law to obtain for authors the benefits of international copyright, and in 1846 England entered into a convention with Prussia, in 1851 with France and Hanover, in 1854 with Belgium, and between 1854 and 1860 with Holland, Italy, Switzerland, and Spain. Between 1846 and 1861 similar conventions were entered into by France with Belgium, Germany, Holland, Switzerland, and Italy, and nearly all the Continental powers have now copyright arrangements with each other. As far as I have been able to learn, it is not requisite under these arrangements to have a book separately entered for copyright in each country. The single entry in the place of first publication is sufficient to protect the author, and to leave him

free to make, within a specified time, his own arrangements with foreign publishers.

In the general copyright statutes, Parliament made no express distinction between native and foreign authors. The copyright was granted "to authors," without any restriction as to nationality. It has been contended, therefore, by jurists on the one hand that the privilege must be presumed to have been intended for British subjects exclusively, and on the other that it of necessity belonged to all authors, whether native or foreign.

There were, previous to 1854, several conflicting decisions of the courts on this question. In that year the House of Lords decided, in the case of Jeffreys *v.* Boosey, that a foreign author, resident abroad, was not entitled to English copyright.

In 1868 the House of Lords, in the case of Routledge *v.* Low, with reference to the rights of an American author who was residing in Canada at the time of the publication of his book in London, declared that an alien became entitled to English copyright by first publishing in the United Kingdom, provided he were, at the time of publication, anywhere within the British dominions. Drone says that "this judgment has continued to represent the law."

It is certainly the case that for a few years after 1868, as a consequence of this decision, several American authors whose books were being published in Lon-

don, took up a temporary residence in Canada, which enabled their London publishers to enter the books for copyright, and to pay the authors an honorarium.

I am not able to quote any decisions that have set aside or modified the above, but I have been advised by leading London publishers that the effect of this judgment has in some way been nullified, and that "Canada copyrights" can no longer be depended upon for protecting American authors in England.

In the United States copyright can at present be secured only by a citizen or permanent resident, and there is no regulation to prevent the use, without remuneration, of the literary property of foreign authors. The United States is therefore at present the only country itself possessing a literature of importance, and making a large use of the literature of the world, which has done nothing to recognize and protect by law the rights of foreign authors of whose property it is enjoying the benefit, or to obtain a similar recognition and protection for its own authors abroad.

It has looked after the rights of the makers of its sewing-machines, its telephones, and its mouse-traps, but it appears to have entirely forgotten the makers of its literature. The position taken by our government in securing for an American author the benefit of the sale of his works at home, while practically estopping him from obtaining any advantage from their sales abroad, is somewhat analogous to its treatment of Amer-

ican ship-owners, who are allowed to pick up all the freights that offer inland and along the coast, but are forbidden to earn a single penny on the high seas.

It is not easy to understand the cause of this continued indifference to the claims of our literary workmen; they do not come into competition with the Delaware River or with any manufacturing interests for *subsidies;* they ask simply for *markets.*

It is true that there have been in the history of our country governments which seemed impatient of the claims of any "literary fellers;" but the majority of our administrations have shown a fair respect for such "fellers," and even a readiness to make use of their services.

The difficulty has really been, however, not with the administrations, but with the people at large, who have failed to fairly educate themselves on the subject, or to recognize that an international copyright was called for not merely on principles of general equity, but as a matter of simple justice to American authors.

These have suffered, and are suffering from the present state of things in two ways. In the first place, they lose the royalty on the sales of their books in Europe, Canada, Australia, etc., that ought to be secured to them by treaties of copyright reciprocity. These sales have become, with the growth of American literature, very considerable, and are each year increasing in importance. Even a quarter of a century ago there were

enough American books whose fame was world-wide to have rendered a very moderate royalty on their sales a matter of great importance to their authors and to the community. "Uncle Tom's Cabin," Irving's "Sketch-Book" and other volumes, Thompson's "Land and the Book," Warner's "Wide, Wide World," Webster's Dictionary, James' "Two Years before the Mast," and Peter Parley's histories are a few random specimens from the earlier list, which is a great deal longer than might at first be thought.

In an official report of the 25th Congress it was stated that up to 1838 not less than 600 American works had been reprinted in England. According to the "American Facts" of G. P. Putnam, 382 American books, acknowledged to be such, were reprinted in Great Britain between 1833 and 1843, while a large amount of American literary material had been "adapted," or issued under new titles as if they had been original British works. Among these last he quotes Judge Story's "Law of Bailments," Everett's "Greek Grammar," Bancroft's Translation of Heeren's Histories, Dr. Harris' "Natural History," etc., etc.

Secondly, the want of an international copyright has placed American authors at a disadvantage because it has checked the sales of their wares at home. Other things being equal, the publisher will, like any other trader, manufacture such goods as will give him the largest profit, and as he can sell the most readily.

If he has before him an American novel on which, if he prints it, he must pay the author a royalty, and an English novel of apparently equal merit, on which he is not called upon by law to pay anything, the commercial inducement is on the side of the latter. If, on the score of patriotism or for some other reason, he may decide in favor of the former, his neighbor or rival will take the English work, and will have advantages for underselling him. As a matter of fact, as I shall specify further on, it is the custom of the leading publishing houses to make some payment for the English material that they reprint, but as they secure no legal title to such material, they cannot, as a rule, pay as much for it as they would for similar American work. There is also the advantage connected with English works that they usually come to the American publisher in type, in convenient form for a rapid examination, and that he can often obtain some English opinions about them which help him to make up his own publishing judgment, and are of very material assistance in securing for the books the favorable attention of the American public. It has therefore been the case that an American work of fiction has had to be a good deal better than a similar English work, and more marked in its attractiveness in order to have anything like the same chance of success. And what is the case with fiction, is true, though to a less degree, with books for young folks and works in other departments of literature. It is to be said, however, that this differ-

ence in favor of English productions has been very much greater in past years than at present, and is, I think, steadily decreasing.

American writers have, against all disadvantages, forced their books to the favorable attention, not only of the American but of the foreign public, and the best work is now fairly secure of a hearing. But there is no question but what the want of a copyright measure has, as above explained, operated during the past three quarters of a century to retard and discourage the growth of American literature, especially of American fiction, and to prevent American authors from receiving a fair return for their labor. An international copyright is the first step towards that long-waited-for "great American novel."

In 1876 a Commission was appointed by the Government of Great Britain "to make inquiry in regard to the laws and regulations relating to home, colonial, and international copyright." The Commission was made fairly representative of the different interests to be considered, comprising among authors: Earl Stanhope, Louis Mallet, Fitzjames Stephen, Edward Jenkins, William Smith, Sir Henry Holland, James Anthony Froude, and Anthony Trollope, and also Sir Julius Benedict for the composers, Sir Charles Young for the dramatists, Sir John Rose and Mr. Farrer for colonial interests, and Mr. F. R. Daldy for the publishers; and it has done its work in the thorough, painstaking way which is characteristic of the methods of British legislation.

It has collected during the past two years a vast mass of testimony from various sources, and after full consideration has arrived at a series of recommendations which it has presented to Parliament, and which will in all probability be adopted.

It is recommended that the copyright on books, instead of holding for forty-two years from date of registration, shall endure for the lifetime of the author and for thirty years thereafter. This is the arrangement at present existing in Germany, and it has the important advantage that under it all the copyrights of an author will expire at the same date.

The Commission further recommends (and this is the recommendation most important for our subject) that the right of copyright throughout the British dominions be extended to any author, wherever resident and of whatever nationality, whose work may first be published within the British Empire.

With reference to the present relations of British authors with this country, it uses the following words: "It has been suggested to us that this country would be justified in taking steps of a retaliatory character, with a view of enforcing, incidentally, that protection from the United States which we accord to them. This might be done by withdrawing from the Americans the privilege of copyright on first publication in this country. We have, however, come to the conclusion that, on the highest public grounds of policy and expediency, it is

advisable that our law should be based on correct principles, irrespectively of the opinions or the policy of other nations. We admit the propriety of protecting copyright, and it appears to us that the principle of copyright, if admitted, is of universal application. We therefore recommend that this country should pursue the policy of recognizing the author's rights, irrespective of nationality."

Here is a claim for a far-seeing, statesmanlike policy, based upon principles of wide equity, and planned for the permanent advantage of literature in England and throughout the world. Contrast with this the narrow and local views of the following resolutions adopted at a meeting held in Philadelphia in January, 1872, with reference to international copyright, at which, if I remember rightly, Mr. Henry Carey Baird presided:

"I. That thought, unless expressed, is the property of the thinker" (a pretty safe proposition, as, *until* expressed, it could hardly incur any serious risk of being appropriated); "when given to the world, it is as light, free to all.

"II. As property it can only demand the protection of the municipal law of the country to which the thinker is subject."

The property which would, if it still existed, most nearly approximate to such a definition as this is that in *slaves*. Twenty years ago, an African chattel who was worth $1000 in Charleston became, on slipping across

to the Bermudas, as a piece of property valueless. He had no longer a market price.

It is this ephemeral kind of ownership, limited by accidental political boundaries, that our Philadelphia friends are willing to concede to the work of a man's mind, the productions into which have been absorbed the grey matter of his brain and perhaps the best part of his life.

"III. The author of any country, by becoming a citizen of this, and assuming and performing the duties thereof, can have the same protection that an American author has."

We have already shown what an exceedingly unprotective and unremunerative arrangement it is that is accorded to the American author, and we have yet to find a single one, except perhaps Mr. Carey, who is satisfied with it.

Why a European author, who has before him, under international conventions, the markets of his native country and of all the world, excepting belated America, should be expected to give up these for the poor half-loaf of protection accorded to his American brother we can hardly understand.

"IV. The trading of privileges to foreign authors for privileges to be granted to Americans is not just, because the interests of others than themselves are sacrificed thereby."

That strikes one as a remarkable sentence to come

from Philadelphia. Here are a number of American manufacturers who ask for a certain very moderate amount of protection for their productions, and our Philadelphia friends, filled with an unwonted zeal for the welfare of the community at large, say, "No; this won't do. Prices would be higher, and *consumers* would suffer."

It is evident that this want of practical sympathy with these literary manufacturers is not due to any lack of interest in the enlightenment of the community, for the last article says:

"V. Because the good of the whole people and the safety of our republican institutions demand that books shall not be made too costly for the multitude by giving the power to foreign authors to fix their price here as well as abroad."

I think we may well doubt whether education as a whole, including the important branch of ethics, is advanced by permitting our citizens to appropriate, without compensation, the labor of others, while through such appropriation they are also assisting to deprive our own authors of a portion of their rightful earnings. But apart from that, the proposition, as stated, proves too much. It is fatal to all copyright and to all patent-right. If the good of the community and the safety of our institutions demand that, in order to make books cheap, the claim to a compensation for the authors must be denied, why should we continue to pay copyrights to

Longfellow and Whittier, or to the families of Irving and Bryant? The so-called owners of these copyrights actually have it in their power, in connection with their publishers, to "fix the prices" of their books in this market. This monopoly must indeed be pernicious and dangerous when it arouses Pennsylvania to come to the rescue of oppressed and impoverished consumers against the exactions of greedy producers, and to raise the cry of "free books for free men."

There is certainly something refreshing in this zeal for the rights of the consumer, though we may doubt the equity of its application in this particular instance; but we can nevertheless hardly be satisfied to have an utterance like that of these resolutions quoted (as it is in the last edition of the Encyclopædia Britannica) as "the latest American views on the subject."

The history of the efforts made in this country to secure international copyright is not a long one. The attempts have been few, and have been lacking in organization and in unanimity of opinion, and they have for the most part been made with but little apparent expectation of any immediate success. Those interested seem to have always felt that popular opinion was, on the whole, against them, and that progress could be hoped for only through the slow process of building up by education and discussion a more enlightened public sentiment.

In 1838, after the passing of the first International

Copyright Act in Great Britain, Lord Palmerston invited the American Government to coöperate in establishing a copyright convention between the two countries.

In the year previous, Henry Clay, as chairman of a committee on the subject, had reported to the Senate very strongly in favor of such a convention, taking the ground that the author's right of property in his work was similar to that of the inventor in his patent.

This is a logical position for a protectionist, interested in the rights of labor, to have taken, and the followers of Henry Clay, who are to-day opposed to any measure of the kind, would do well to bear in mind this opinion of their ablest leader.

No action was taken in regard to Mr. Clay's report or Lord Palmerston's proposal.

In 1840 Mr. G. P. Putnam issued in pamphlet form "An Argument in behalf of International Copyright," the first publication on the subject in the United States of which I find record. In 1843 Mr. Putnam obtained the signatures of ninety-seven publishers, printers, and binders to a petition he had prepared, and which was duly presented to Congress. It took the broad ground that the absence of an international copyright was "alike injurious to the business of publishing and to the best interests of the people at large."

A memorial was presented the same year in opposition to this petition, setting forth, among other things, that an international copyright would "prevent the

adaptation of English books to American wants." In the report made by Mr. Baldwin to Congress twenty-five years later, he remarks that "the mutilation and reconstruction of American books to suit English wants are common to a shameless extent."

In 1853 the question of a copyright convention with Great Britain was again under discussion, the measure being favored by Mr. Everett, at that time Secretary of State. Five of the leading publishing houses in New York addressed a letter to Mr. Everett in which, while favoring a convention, they advised—

1st. That the foreign author must be required to register the title of his work in the United States before its publication abroad.

2d. That the work, to secure protection, must be issued in the United States within thirty days of its publication abroad; and

3d. That the reprint must be wholly manufactured in the United States.

Shortly afterwards Mr. Carey published his "Letters on International Copyright," in which he took the ground that the facts and ideas in a book are the common property of society, and that property in copyright is indefensible. In 1858 a bill was introduced into the House of Representatives by Mr. Morris, of Pennsylvania, providing for international copyright on the basis of an entire remanufacture of the foreign work and its reissue by an American publisher within thirty days

of the publication abroad. The bill does not appear to have received any consideration.

In March, 1868, a circular letter headed "Justice to Authors and Artists," was issued by a Committee composed of G. P. Putnam, Dr. S. I. Prime, Henry Ivison, James Parton, and Egbert Hazard, calling together a meeting for the consideration of the subject of international copyright. The meeting was held on the 9th of April, Mr. Bryant presiding, and a society was organized under the title of the "Copyright Association for the Protection and Advancement of Literature and Art," of which Mr. Bryant was made president and E. C. Stedman secretary. The primary object of the Association was stated to be "to promote the enactment of a just and suitable international copyright law for the benefit of authors and artists in all parts of the world."

A memorial had been prepared by the above-mentioned Committee to be presented to Congress, which requested Congress to give its early attention to the passage of a bill "to secure in all parts of the world the rights of authors," etc., but which made no recommendations as to the details of any measure. Of the 153 signatures attached to this memorial, 101 were those of authors, and 19 of publishers.

In the fall of 1868 Mr. J. D. Baldwin, member of Congress from Worcester, Mass., reported a bill that had been prepared with the co-operation of the Executive

Committee of the Copyright Association, which provided, That a foreign work could secure a copyright in this country provided it was wholly manufactured here and should be issued for sale by a publisher who was an American citizen. The benefit of the copyright was also limited to the author and his assigns.

The bill was recommitted to the Joint Committee on the Library, and no action was taken upon it. The members of this Committee were Senators E. D. Morgan, of New York, Howe, of Wisconsin, and Fessenden, of Maine, who were opposed to the measure, and Representatives Baldwin, of Massachusetts, Pruyn, of New York, and Spalding, of Ohio, who were in favor of it. The bill was also to have been supported in the House by Michael C. Kerr, of Indiana. Mr. Baldwin explains that an important cause for the shelving of the measure without debate was the impeachment of President Johnson, which was at that time absorbing the attention of Congress and the country. No general expression of opinion was therefore elicited upon the question from either Congress or the people, and in fact the question has never reached such a stage as to enable such an expression of public opinion to be arrived at.

It is my own belief that if the issue were fairly presented to them, the American people could be trusted to decide it honestly and wisely.

The active members of the committee of the Copyright Association, under whose general suggestions this

bill of Mr. Baldwin's had been framed, were Dr. S. Irenæus Prime, George P. Putnam, and James Parton. Dr. Prime published in *Putnam's Magazine* in May, 1868, a paper on the "Right of Copyright," which remains perhaps the most concise and comprehensive statement of the principles governing the question, and which sets forth very clearly the necessary connection between Carey's denial of the right of property in books and Proudhon's claim that all property is robbery. In 1871 Mr. Cox of New York introduced a bill which was practically identical with Mr. Baldwin's measure, and which was also recommitted to the Library Committee. In 1872 the new Library Committee called upon the publishers and others interested to aid in framing a bill.

A meeting of the publishers was called in New York, which was attended by but one firm outside of New York; the majority of the firms present were in favor of the provisions of Mr. Cox's bill, already referred to. The report was dissented from by a large minority on the ground that the bill was in the interests of the publishers rather than that of the public; that the prohibition of the use of foreign stereotypes and electrotypes of illustrations was an economic absurdity; and that an English publishing house could in any case, through an American partner, retain control of the American market. The report of the minority was prepared by Mr. Edward Seymour, of Scribner, Armstrong & Co. During the same week a bill was drafted by Mr.

C. A. Bristed, representing more especially the views of the authors in the International Copyright Association, which provided simply that "all rights of property secured to citizens of the United States by existing copyright laws are hereby secured to the citizens and subjects of every country the government of which secures reciprocal rights to the citizens of the United States." The same result as that aimed at in Mr. Bristed's bill would have been obtained by the adoption of the recommendation made by Mr. J. A. Morgan in his work on "The Law of Literature," published in 1876. He suggested that the present copyright law be amended by simply inserting the word "person" in place of "citizen," in which case its privileges would at once be secured to any authors, of whatever nationality, who complied with its requirements.

A few weeks later the meeting was held in Philadelphia whose resolutions in opposition to international copyright (which, as we have shown, were equally forcible against any copyright) we have already quoted.

These four reports were submitted to the Library Committee of Congress, together with one or two individual measures, of which the most noteworthy were those of Harper & Bros., and of John P. Morton, bookseller, of Louisville.

Messrs. Harper, in a letter presented by their counsel, objected to any measure of international copyright on the broad ground that it would "add to the price of

books and interfere with the education of the people." This consideration is of course open to the same criticism as the Philadelphia platform; it is equally forcible against any copyright whatever. As Thomas Hood says, "cheap *bread* is as desirable and necessary as cheap books," but one does not on that ground appropriate the farmer's wheat-stacks!

Mr. Morton was in favor of an arrangement that should give to any dealer the privilege of reprinting a foreign work, provided he would contract to pay to the author or his representative 10 per cent of the wholesale price of such work. He advised also that the American market should be left open to the foreign edition, so that the competition should be perfectly unrestricted.

The proposition that all dealers who would contract to pay to the author a royalty (to be fixed by law) should be at liberty to undertake the publication of a work was at a later date presented to the British Commission by Mr. Farrer and Sir Henry Holland, first with reference to home copyright, and secondly as a suggestion for an international arrangement. In this last shape the writer had the opportunity, in 1876, of presenting to the Commission some considerations against it. These will be referred to further on.

A similar suggestion formed the basis of a measure submitted in 1872 by Mr. Elderkin, of New York, to the Library Committee of Congress, and known afterwards as the Sherman Bill.

In view of the wide diversity of the plans and suggestions presented to this Committee, there was certainly some ground for the statement made in his report by the chairman, Senator Lot M. Morrill, of Maine, that "there was no unanimity of opinion among those interested in the measure." He maintained, further, that an international copyright was not called for by reasons of general equity or of constitutional law; that the adoption of any plan which had been proposed would be of very doubtful advantage to American authors, and would not only be an unquestionable and permanent injury to the interests engaged in the manufacture of books, but a hindrance to the diffusion of knowledge among the people, and to the cause of American education.

This report closed for the time the consideration of the subject.

The efforts in behalf of international copyright have been always more or less hampered by the question being confused with that of a protective tariff.

The strongest opposition to a copyright measure has as a rule come from the protectionists. Richard Grant White said in 1868: "The refusal of copyright in the United States to British authors is in fact, though it is not so avowed, a part of the 'American' protective system." And again: "With free trade we shall have just international copyright."

It would be difficult, however, for the protectionists

to show logical grounds for their position. American authors are manufacturers, who are simply asking, first, that they shall not be undersold in their home market by goods imported from abroad on which no (ownership) duty has been paid,—which have, namely, been simply "appropriated;" and secondly, that the government may facilitate their efforts to secure a sale for their own goods in foreign markets. These are claims with which a protectionist who is interested in developing American industry ought certainly to be in sympathy.

The contingency that troubles him, however, is the possibility that, if the English author is given the right to sell his books in this country the copies sold may be to a greater or less extent manufactured in England, and the business of making these copies may be lost to American printers, binders, and paper men. He is namely, much more concerned for the protection of the makers of the *material casing* of the book than for that of the author who creates its essential substance.

It is evidently to the advantage of the consumer, upon whose interests the Philadelphia resolutions laid so much stress, that the labor of preparing the editions of his books be economized as much as possible.

The principal portion of the cost of a first edition of a book is the setting of the type, or, if the work is illustrated, in the setting of the type and the designing and engraving of the illustrations.

If this first cost of stereotyping and engraving can be

divided among several editions, say one for Great Britain, one for the United States, and one for Canada and the other colonies, it is evident that the proportion to be charged to each copy printed is less, and that the selling price per copy can be smaller, than would be the case if this first cost has got to be repeated in full for each market.

It is then to the advantage of the consumer that, whatever copyright arrangement be made, nothing shall stand in the way of foreign stereotypes and illustrations being duplicated for use here whenever the foreign edition is in such shape as to render this duplicating an advantage and a saving in cost.

The few protectionists who have expressed themselves in favor of an international copyright measure, and some others who have fears as to our publishing interests being able to hold their own against any open competition, insist upon the condition that foreign works to obtain copyright must be wholly remanufactured and republished in this country.

We have shown how such a condition would, in the majority of cases, be contrary to the interests of the American consumer, while the British author is naturally opposed to it because, in increasing materially the outlay to be incurred by the American publisher in the production of his edition, it proportionately diminishes the profits or prospects of profits from which is calculated the remuneration that can be paid to the author.

The measure of permitting the foreign book to be reprinted by all dealers who would contract to pay the author a specified royalty has at first sight something specious and plausible about it. It seems to be in harmony with the principles of freedom of trade, in which we are believers. It is, however, directly opposed to those principles; first, it impairs the freedom of contract, preventing the producer from making such arrangements for supplying the public as seem best to him; and secondly, it undertakes, by paternal legislation, to fix the remuneration that shall be given to the producer for his work, and to limit the prices at which this work shall be furnished to the consumer. There is no more equity in the government's undertaking this limitation of the producer and protection of the consumer in the case of *books* than there would be in that of bread or of beef.

Further, such an arrangement would be of benefit to neither the author, the public, nor the publishers, and would, we believe, make of international copyright, and of any copyright, a confusing and futile absurdity.

A British author could hardly obtain much satisfaction from an arrangement which, while preventing him from having his American business in the hands of a publishing house selected by himself, and of whose responsibility he could assure himself, threw open the use of his property to any dealers who might choose to scramble for it. He could exercise no control over

the style, the shape, or the accuracy of his American editions; could have no trustworthy information as to the number of copies the various editions contained; and if he were tenacious as to the collection of the royalties to which he was entitled, he would be able in many cases to enforce his claims only through innumerable lawsuits, and he would find the expenses of the collection exceed the receipts.

The benefit to the public would be no more apparent. Any gain in the cheapness of the editions produced would be more than offset by their unsatisfactoriness: they would, in the majority of cases, be untrustworthy as to accuracy or completeness, and be hastily and flimsily manufactured. A great many enterprises, also, desirable in themselves, and that would be of service to the public, no publisher could, under such an arrangement, afford to undertake at all, as, if they proved successful, unscrupulous neighbors would, through rival editions, reap the benefit of his judgment and his advertising. In fact, the business of reprinting would fall largely into the hands of irresponsible parties, from whom no copyright could be collected.

The arguments against a measure of this kind are, in short, the arguments in favor of international copyright. A very conclusive statement of the case against the equity or desirability from any point of view of such an arrangement in regard to home copyright was made before the British Commission, in 1877, by Herbert Spen-

cer. His testimony is given in full in the *Popular Science Monthly* for November, 1878, and February, 1879.

The recommendation had been made that, for the sake of securing cheap books for the people, the law should give to all dealers the privilege of printing an author's books, and should fix a copyright to be paid to the author that should secure him a "fair profit for his work." Mr. Spencer objected that—

First. This would be a direct interference with the laws of trade, under which the author had the right to make his own bargains. Second. No legislature was competent to determine what was "a fair rate of profit" for an author. Third. No average royalty could be determined which could give a fair recompense for the different amounts and kinds of labor given to the production of different classes of books. Fourth. If the legislature has the right to fix the profits of the author, it has an equal right to determine that of his associate in the publication, the publisher; and if of the publisher, then also of the printer, binder, and paper-maker, who all have an interest in the undertaking. Such a right of control would apply with equal force to manufacturers of other articles of importance to the community, and would not be in accordance with the present theories of the proper functions of government. Fifth. If books are to be cheapened by such a measure, it must be at the expense of some portion of the profits now going to the authors and publishers; the assumption is that book producers

and distributors do not understand their business, but require to be instructed by the state how to carry it on, and that the publishing business alone needs to have its returns regulated by law. Sixth. The prices of the best books would in many cases, instead of being lessened, be higher than at present, because the publishers would require some insurance against the risk of rival editions, and because they would make their first editions smaller, and the first cost would have to be divided among a less number of copies. Such reductions of prices as would be made would be on the flimsier and more popular literature, and even on this could not be lasting. Seventh. For the enterprises of the most lasting importance to the public, requiring considerable investment of time and capital, the publishers require to be assured of returns from the largest market possible, and without such security enterprises of this character could not be undertaken at all. Eighth. Open competition of this kind would, in the end, result in crushing out the smaller publishers, and in concentrating the business in the hands of a few houses whose purses had been long enough to carry them through the long and unprofitable contests that would certainly be the first effect of such legislation.

All the considerations adduced by Mr. Spencer have, of course, equal force with reference to open international publishing, while they may also be included among the arguments in behalf of international copyright.

With these views of a veteran writer of books may very properly be associated the opinions of the experienced publisher, Mr. Wm. H. Appleton, who, in a letter to the New York *Times* in 1872, says:

"The first demand of property is for security. . . To publish a book in any real sense—that is, not merely to print it, but to make it well and widely known—requires much effort and large expenditure, and these will not be invested in a property which is liable to be destroyed at any moment. Legal protection would thus put an end to evil practices, make property secure, business more legitimate, and give a new vigor to enterprise. Nor can a policy which is unjust to the author, and works viciously in the trade, be the best for the public. The publisher can neither afford to make the book so thoroughly known, nor can he put it at so low a price, as if he could count upon permanent and undisturbed possession of it. Many valuable books are not reprinted at all, and therefere are only to be had at English prices, for the same reason that publishers are cautious about risking their capital in unprotected property."

The copy-book motto, "Honesty is the best policy," fails often enough to come true (at least as to material results) in the case of the individual, simply because his life is not always long enough to give an opportunity for all the results of his actions to be arrived at. The community, however, in its longer life, is subject to

the full influence of the certain though sometimes slow-working relations of cause to effect, relations which, among other things, bring out the essential connection between economics and ethics, and which show in the long-run the just method to be the wise method. An enlightened self-interest finds out the advantage of equity. If the teaching of history makes anything evident, it is that in the transactions of a nation, honesty *pays*, even in the narrowest and most selfish sense of the term, and nothing but honesty can ever pay. Among the many classes of interests to which this applies international copyright certainly belongs.

Rejecting the Elderkin-Sherman suggestion of an open market for republishing as in no way effecting the objects desired; the Baldwin-Cox plan of giving protection only to books of which the type had been set and the printing done in this country, as narrow in principle and uneconomic in practice; and the Bristed-Morgan proposition to extend the right of copyright without limitation or restriction, as not giving sufficient consideration to the business requirements, and as at present impracticable to carry into effect—we would recommend a measure based upon the suggestion of the British Commission, coupled with one or two of the provisions that have been included in the several American schemes:

1. That the title of the foreign work be registered in the United States simultaneously with its publication abroad.

2. That the work be republished in the United States within six months of its publication abroad.

3. That for a limited term, say ten years, the stipulation should be made that the republishing be done by an American citizen.

4. That for the same term of years the copyright protection be given to those books only that have been printed and bound in this country, the privilege being accorded of importing foreign stereotypes and electrotypes of cuts.

5. That, subject to these provisions, the foreign author or his assigns shall be accorded the same privileges now conceded to an American author.

I believe that, in the course of time, the general laws of trade would and ought to so regulate the arrangements for supplying the American public with books that, if there were no restriction as to the nationality of the publisher or as to the importation of printed volumes, the author would select the publishing agent, English or American, who could serve him to best advantage: and that that agent would be found to be the man who would prepare for the largest possible circle of American readers the editions best suited to their wants.

The foreign author would before long recognize that it was to his interest to be represented by the publisher who understood the market most thoroughly and who had the best facilities for supplying it. If English publishers,

settling here, could excel our American houses in this understanding and in these facilities, they ought to be at liberty to do so, and it would be for the interest of the public that no hindrances should be placed in their way.

The experience of our American houses, however, who have had business with English authors and publishers is that it takes some little time for them to obtain a clear perception of the requirements of the American market and of American readers, and of the very material differences existing between the status here and in Great Britain. And it would be my fear that, if the copyright were granted at once without restriction, there would be an interregnum of some years, during which these authors and publishers were obtaining their American education, before the American readers could obtain freely the books they wanted in the editions they were willing to purchase.

Our friends on the other side could not resist the temptation of experimenting, before providing what was really wanted, as to how long our market would stand their expensive $7, $5, and $3 editions of books that we have been accustomed to buy here for $2.50, $2, and $1; and as a consequence, they would sell books by dozens or hundreds that ought to be sold by thousands; their authors would receive an inconsiderable copyright, and the American public would be badly served and would become indignant.

But if the channels of communication between the

English authors and their American readers were once fairly established, as they would be, I think, under the arrangements suggested, it would not, I believe, be possible at a later date to interfere with them, even if all restrictions were removed. When American readers were buying by thousands a suitable edition, at a moderate price, of a work by a standard English author who was himself receiving a good return from his enlarged sales, this author would be as little likely, at the expiration of the ten years, to restrict those sales by insisting that his work should be sold here in the costly and unsuitable English edition, as to stipulate that it should be sold here in a Russian translation. It is probable, also, that the including in the measure of these restrictions, even if but for a limited term of years, would gain for it some support that would be important for its success. It seems probable that, if the present conditions of trade are maintained, American book-makers need not be especially troubled ten years hence by the competition of books manufactured in England, and that, if the various duties affecting the manufacture could be abolished, we could well spare the duty on books themselves.

I can, however, imagine no state of affairs in which it would be economical or desirable to insist upon two settings of type for a book designed for different groups of English-speaking readers; and the more generally this first and most important part of the cost of a book can be economized by being divided between the two

markets, the greater the advantage in the end to author, public, and publisher.

A proposition will doubtless be made in the course of a year by the British Government for the appointment of an International Commission for a fresh consideration of the subject, and our government ought to prepare for this International Commission by the early appointment of a Home Commission to give due consideration to the several interests involved in the question, to collect again the different sets of opinions, and to harmonize these as far as practicable.

By the time our English friends are ready to talk the matter with us, we ought to have informed ourselves definitely as to what kind of a measure is on the whole most desirable, and how much of this it is at this present time practicable to carry into effect.

There has undoubtedly during the past ten years been a growth of enlightened public sentiment on the question, but I should still be indisposed to entrust its settlement to the House of Representatives, and should suppose that it could probably be handled to best advantage by the Senate in the shape of a treaty.

It is due to American publishers to explain that, in the absence of an international copyright, there has grown up among them a custom of making payments to foreign authors which has become, especially during the last twenty-five years, a matter of very considerable importance. Some of the English authors who testified

before the British Commission stated that the payments from the United States for their books exceeded their receipts in Great Britain. These payments secure of course to the American publisher no title of any kind to the books. In some cases they obtain for him the use of advance sheets by means of which he is able to get his edition printed a week or two in advance of any unauthorized edition that might be prepared. In many cases however, payments have been made some time after the publication of the works, and when there was no longer even the slight advantage of "advance sheets" to be gained from them.

While the authorization of the English author can convey no title or means of defence against the interference of rival editions, the leading publishing houses have, with very inconsiderable exceptions, respected each others' arrangements with foreign authors, and the editions announced as published "by arrangement with the author," and on which payments in lieu of copyright have been duly made, have been as a rule not interfered with. This understanding among the publishers goes by the name of "the courtesy of the trade." I think it is safe to say that it is to-day the exception for an English work of any value to be published by any reputable house without a fair and often a very liberal recognition being made of the rights (in equity) of the author.

In view of the considerable amount of harsh language that has been expended in England upon our American

publishing houses, and the opinion prevailing in England that the wrong in reprinting is entirely one-sided, it is in order here to make the claim, which can, I believe, be fully substantiated, that in respect to the recognition of the rights of authors unprotected by law, their record has during the past twenty-five years been in fact better than that of their English brethren. They have become fully aroused in England to the fact that American literary material has value and availability, and each year a larger amount of this material has had the honor of being introduced to the English public. According to the statistics of 1878, ten per cent of the works issued in England in that year were American reprints. The acknowledgments, however, of any rights on the part of American authors have been few and far between, and the payments but inconsiderable in amount. The leading English houses would doubtless very much prefer to follow the American practice of paying for their reprinted material, but they have not succeeded in establishing any general understanding similar to our American "courtesy of the trade," and books that have been paid for by one house are, in a large number of cases, promptly reissued in cheaper rival editions by other houses. It is very evident that, in the face of open and unscrupulous competition, continued or considerable payments to authors are difficult to provide for; and the more credit is due to those firms who have, in the face of this difficulty, kept a good record with their American authors.

One London publisher in London made a custom for years of sending a liberal remittance to the author of the "Wide, Wide World" for each new volume sent to him. But the competition of the unauthorized editions had proved so sharp that he told me he got no profit from his purchases, and did not see how he could continue them.

The fate of the author of "Helen's Babies" was still harder. Of his first book seven editions were issued by different British houses, aggregating together an enormous sale, from which he received hardly a penny. For the advance sheets of the sequel to this one firm paid him £50. But so fierce was the scramble for it among the half dozen or more publishers who hurried through their reprints from the American journal in which it was appearing as a serial, that one energetic house sent it out to the British public minus the concluding chapter, while another, still more enterprising, had the last chapter of his edition added by an English hand, and the moral of the story was entirely transformed.

Of the books of Longfellow, Lowell, Holmes, Mrs. Prentiss, Mark Twain, Dr. Mayo, Miss Phelps, Miss Alcott, Mrs. Stowe, Bayard Taylor, and most of our more popular authors, there are, in like manner, various rival editions, and no one house, however good its intentions, can afford to make a practice of paying these authors, as its neighbors cannot be depended upon to respect its arrangements

On the other hand, the leading English authors, like George Eliot, Miss Mulock, William Black, R. D. Blackmore, Wilkie Collins, Thomas Hardy, Mrs. Alexander, Tyndall, Huxley, and very many others, have received and are receiving liberal payments from their American publishers, who are accustomed, as I have said, not to interfere with each others' purchases.

In past years there have been sharp criticisms on the other side of an American habit of "adapting" and reshaping English books, so that the authors, in addition to the grievance of receiving no compensation for their American editions, had the further cause for complaint that these editions were not trustworthy and did not fairly represent their productions. It was also charged that English material was occasionally "annexed" bodily by American authors, without any credit being given. For both sets of charges there have doubtless been grounds, but the instances have certainly during the past quarter century grown very much fewer. Indeed, the last kind of appropriation would to-day be almost impossible, as the knowledge of English current literature is so thorough that detection would follow at once. "Appropriated" material could not be sold. In England, however, while American literature is, as I have shown, beginning to be appreciated, it is not yet at all thoroughly known, and there is therefore much less risk in making use of it. As a matter of fact it has been so made use of by literary hacks to a considerable extent,

and there are some amusing instances in which the English publishers and English critics have been imposed upon by material that was *not* original. Mr. Randolph, the publisher, relates how he was innocently led to reprint some essays brought to him by an English friend, which seemed to him very fresh and original, and which proved to have been taken bodily from one of Henry Ward Beecher's volumes. Mr. Randolph promptly called Mr. Beecher's attention to his own felonious conduct, and handed him a check for the considerable amount due him for copyright on the sales.

A translation by Charlton T. Lewis of Bengel's "Gnomon of the New Testament" was reprinted in London as the work of "two clergymen of the Church of England." Mr. Lewis' version was followed verbatim, with the single exception of the omission of some Latin quotations.

Dr. S. Irenæus Prime had sent to him a volume bearing the name of an English author, with the inquiry as to whether, in his judgment, it was likely to prove of interest for American readers. He found he was hardly in a position to give an impartial answer to the inquiry, as the book was one of *his own*, for several editions of which the American public had already shown a hearty appreciation.

These are but incidental examples of one kind of appreciation that has been accorded to American literary work, which may be complimentary but can hardly be

called satisfactory. I refer to them not because they can be considered as any legitimate extenuation of similar American misdeeds, for I do not admit that in questions of equity, the *tu quoque* forms any argument or defence. They are worth mentioning only for the sake of emphasizing to our English friends, what they have not fairly appreciated, that there are at least two sides to the evil of the present state of things, and that the demoralization produced by it has not been confined to our side of the Atlantic. These instances of misappropriation are not of course fairly representative of the English publishing or literary fraternity, any more than similar American instances, which have formed the text of various English homilies, can be accepted as indicating the standard of literary and trade morality with us. We Americans simply say for ourselves that the evils and demoralizing tendencies of the lack of international agreements are fully recognized by us, and that while certain conditions of manufacturing have heretofore formed a troublesome obstacle in the way of the establishing of such agreement, we are glad to believe that this obstacle is now in a fair way of being overcome. In the meantime, we claim that, in the absence of law, our American publishers, especially those of the present generation, have, of their own free will, given to English authors a large part of the advantage that a law would have secured to them, and have done this without any corresponding advantage of protection for themselves.

We are also fully appreciative of the credit due to such of the English houses as (in the face of perhaps greater difficulties) have made similar efforts to do justice to American authors.

One of the not least important results to be looked for from international copyright is a more effective co-operation in their work on the part of the publishers of the two great English-speaking nations. They will find their interest and profit in working together, and the very great extension that may be expected in the custom of a joint investment in the production of books for both markets will bring a very material saving in the first cost, a saving in the advantage of which authors, publishers, and public will alike share.

It seems probable that the "courtesy of the trade" which has made possible the present relations between American publishers and foreign authors is not going to retain its effectiveness. Within the last year certain "libraries" and "series" have sprung into existence, which present in cheaply-printed pamphlet form some of the best of recent English fiction. Those who conduct them reap the advantage of the literary judgment and foreign connections of the older publishing houses, and, taking possession of material that has been carefully selected and liberally paid for, are able to offer it to the public at prices which are certainly low as compared with those of bound books that have paid copyright, but are

doubtless high enough for literature that is so cheaply obtained and so cheaply printed.

These enterprises have been carried on by concerns which have not heretofore dealt in standard fiction, and which are not prepared to respect the international arrangements or trade courtesies of the older houses.

To one of the "cheap series" the above remarks do not apply. The "Franklin Square Library" is published by a house which makes a practice of paying for its English literary material, and which lays great stress upon "the courtesy of the trade." It is generally understood by the trade that this series was planned, not so much as a publishing investment, as for purposes of self-defence, and that it would in all probability not be continued after the necessity for self-defence had passed by. A good many of its numbers include works for which the usual English payments have been made, and it is very evident that, in this shape, books so paid for cannot secure a remunerative sale. It seems safe to conclude, therefore, that their publication is not, in the literal sense of the term, a *business* investment, and that the undertaking is not planned to be permanent.

A very considerable business in cheap reprints has also sprung up in Toronto, from which point are circulated throughout the Western States cheap editions of English works for the "advance sheets" and "American market," of which Eastern publishers have paid liberal prices. Some enterprising Canadian dealers have also

taken advantage of the present confusion between the United States postal and customs regulations to build up a trade by supplying through the mails reprints of *American copyright works*, in editions which, being flimsily printed, and free of charge for copyright, can be sold at very moderate prices indeed.

It is very evident that, in the face of competition of this kind, the payments by American publishers to foreign writers of fiction must be materially diminished, or must cease altogether. These pamphlet series have, however, done a most important service in pointing out the absurdity of the present condition of literary property, and in emphasizing the need of an international copyright law. In connection with the change in the conditions of book-manufacturing before alluded to, they may be credited as having influenced a material modification of opinion on the part of publishers who have in years past opposed an international copyright as either inexpedient or unnecessary, but who are now quoted as ready to give their support to any practicable and equitable measure that may be proposed.

I have endeavored to give in the foregoing pages an outline sketch of the history and present position of the question of international copyright, and to briefly indicate some of the relations in which it stands to ethics and political economy.

We may, I trust, be able, at no very distant period, to look back upon, as exploded fallacies of an antiquated